

(Signature)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.1436/91.

Date of decision 15.2.1993

Shri C.H. Sharma ... Applicant

Vs.

Union of India ... Respondents
and Others.

CORAM:

The Hon'ble Member Shri C.J. Ray, Member (J)

For the Applicant ... Shri M.B. Singh, counsel.

For the Respondents ... None

(1) Whether Reporters of local papers may be allowed to see the judgement ?

(2) To be referred to the Reporter or not ?

J_U_D_G_E_M_E_N_T

[Delivered by Hon'ble Shri C.J. Ray, Member (J)]

Heard Mr. M.B. Singh, Learned Counsel for the applicant. None for the respondents. The case is reserved for orders on 4.2.1993.

2. This case is filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 praying a relief to quash the impugned order dated 10.4.1989 declaring 6.1.1989 as 'dies non' and order passed on the application against this impugned order by the Appellate Order, be declared as casual leave

(28)

or medical leave which legally accrued to the applicant as he being a permanent Government servant.

2. The applicant claims that he filed two OAs for various cause of action and the applicant has been harrassed. Hence, they passed the impugned order.

3. It appears that the applicant was served with a memo. and the same was replied by the applicant along with an application supported by medical certificate. In spite of the application, the applicant alleges, that the respondents hatched a conspiracy and a vigilance checking was called and got reported a false statement that the applicant had run away before 5.00 PM whereas he was on leave since morning and had not come to the office at all. Since he did not attend office, there is no question of anybody catching him from running away from the office. He expresses that respondents have failed to apply their mind to the fact that on 6.1.1989 when the applicant was on sick leave and was not present in office and that he sent his application by post accompanied by a medical certificate. In a couple of paras, the applicant alleges so many facts relating to malafide and malicious acts and with a view to harrass him ^{they} initiated the impugned punishment in order to spoil his service book. He claims cause of action on 10.4.1989 when the impugned order was passed and also on 20.11.1989 when the appeal

was rejected and also on 9.5.1989 when his review was filed but the same had not been decided till today.

4. He claims that no show cause notice was given nor any opportunity was given to the applicant before passing the impugned order 'dies non' for one day on 6.1.1989.

5. The case was filed on 12.6.1989 and after complying with the office objections was resubmitted on 13.6.1991.

6. The impugned order was passed on 10.4.1989 (Ann.A-1).

An appeal was preferred on 3.5.1989 (Ann. A-2). Vide Ann.A-1

at p. 10, the applicant was asked to submit an explanation

for his absence on 6.1.1989. He submitted his explanation

stating that he was on casual leave for the whole day and is

also stated that it was sent by post, but it does contain any

enclosure i.e. medical certificate. On the margin on the left

hand side it is written 'signed by somebody's initial on 16/1

but there is no postal cover or acknowledgement or any other

such evidence for this. Annexure A-2(4) is an appeal dated

3.5.1989 in which it is mentioned that a medical certificate

was also enclosed which is shown as IV with other enclosures.

Medical Certificate is dated 6.1.89 and it is at Annexure A.2(5)

It is a zerex copy but not supported by any attendant or

corroborative evidence like the draft doctor's fees bill

or any treatment as out-patient or ~~indoe~~-patient or any such

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thing. Ann. A-4 is a review filed by him on 9.5.1989. The impugned order is dated 10.4.1989 which is at Annexure A-1 i.e. p. 1 of the paper book immediately after the application.

This was shown as received today and dated as 12.4.1989.

7. It is pertinent to mention that when he claims to be on casual leave on 6.1.1989 and he was asked to explain on 14.1.89 his reply dated 16.1.89 does not contain the doctor's certificate as an enclosure.

8. But the doctor's certificate is at Annexure 2 of the appeal.

9. Annexure A-3 at p. 17 is a rejection letter which is a cryptic order without giving any reason. On this he represented by way of a review on 9.5.1989 to the Medical Superintendent. It is not disposed of so far as per avornment in the application. A delay condonation application was also filed showing a delay of one year.

10. On 28.2.1992 the delay in filing the OA was condoned. Since the limitation aspect has been got over by the condonation of the delay, we will examine the merits of the case now.

11. The respondents filed a counter taking some preliminary objections without naming anything in para No. 1 and 2 but in para 3, there is no casuse of action. They say that

the applicant has filed a medical certificate only on 8.1.1989 but his reply did not come in office by 6.1.89 and, therefore the petition is not maintainable and the impugned order was correctly passed.

12. Under Rule 11 of the CCS(CCA) sub-clause(6)and(7) deal with 'dies non' and its effect which is reproduced below:-

" (6) When a day can be marked dies non and its effect.-

Absence of officials from duty without proper permission or when a duty in office, they have left the office without proper permission or while in the office, they refused to perform the duties assigned to them is subversive of discipline. In cases of such absence from work, the leave sanctioning authority may order that the days on which work is not performed be treated as dies non, i.e., they will neither count as service nor be construed as break in service. This will be without prejudice to any other action that the competent authorities might take against the persons resorting to such practices.

(7) No marking of dies non for late-coming.- According to Instructions above the day can be marked as dies non by the leave sanctioning authority only under three circumstances, viz.,-

(i) when the official remains absent from duty without prior information;

(ii) when on duty in office, the official leaves the office without proper permission; and

(iii) the official remains in office, but refuses to perform duty assigned to him.

From the conditions mentioned above, it is clear that an official can be marked as dies non even if he performs duty for a part of the day in case he leaves office without proper permission or when he refuses to perform duties while remaining in office. But a day on which an official comes late and works throughout the day during office hours will not be marked as dies non. It is accordingly clarified that treating the day as dies non for coming late is not contemplated in the rules. The proper course in such cases would be to debit the casual leave account of the official as per instructions issued from time to time."

So, it is clear that when a day is declared as 'dies non' they will not count as service nor will it ^{be} construed as break in service. However, it may be stated that if it is entered in the record, it will act as a stigma.

13. Under FR 17-A a persons remaining absent unauthorised-ly is treated as is deemed to have been treated as interruption or break in service. However, in CCS(CCA) Rules the

instructions of the Government as stated supra are that this is neither counted for service nor to be construed as break in service. Even then if it is entered in the service record of the applicant it may amount to a stigma.

14. The opportunity given to him is not adequate. The order of rejection to his appeal is in a cryptic manner and without giving any reasons when a competent authority is treating the day as 'dies non'. In my opinion, he must have been given sufficient opportunity.

14. Under the circumstances, mere asking him on 14.1.89 and his reply on 16.1.89 was not at all discussed in the impugned order dated 10.4.1989 nor anywhere in the record. The mere mention of the explanation as furnished in the record will not lead to any where. The rejection order of his appeal is, no doubt, not a speaking order. It is also to be noted that his review petition has also so far not been disposed of. Therefore, I direct that the impugned order dated 10.4.89 be quashed and I give the liberty to the respondents to give a fresh opportunity to the applicant to explain his position along with his medical evidence and other things that he considers fit in accordance with the rules, and they may pass

order accordingly within two months of receipt of
this order. This O.A. is disposed of with no
order as to costs.

W. H. Roy
(C.J. Roy)
Member (J)

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